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2 September 2009

Office of the Clerk, J. Michael McMahon
U.S. District Court for the Southern District of New York
500 Pearl Street
New York,
New York 10007-1312
United States of American

Dear Mr McMahon

**Re: Authors Guild v. Google Inc., No. 05 – CIV-8136 (DC)**

I write to object to the Proposed Settlement as a class member. The grounds for my objection are:

- Court has misapplied the Berne Convention
- Court has exceeded its jurisdiction
- Author Sub-Class not applicable to NZ authors
- Insufficient notice to satisfy notice requirements
- Inadequate compensation
- Overriding contractual relationships between author and publisher
- Unfair treatment of non US authors
- Unfair treatment of non US public
- Antitrust issue surrounding the significant market power Google would acquire through the settlement

**Berne Convention**

The Berne Convention for the Protection of Literary and Artistic Works provides for automatic protection. It does not provide for reciprocity of burden. Whether one agrees or disagrees with the settlement, clearly it does far more than afford protections to authors. It sets up a regime that has been referred to as an international licensing regime requiring affirmative action and effort by authors to understand it first of all and then to take steps even if they wish to opt out. These are not reciprocal protections as envisaged by Berne and therefore it is not appropriate to rely on the treaty as a means to extend the settlement to non US authors. Non US authors should be removed from the author sub-class.

**Lack of Jurisdiction**

Given that Berne does not of itself bring New Zealand authors within the ambit of the settlement it follows that the Court does not have jurisdiction over them. Any grant of copyright to a New Zealand author must be subject to New Zealand law and the jurisdiction of the New Zealand courts. I therefore protest the jurisdiction of this Court and reserve all rights in that regard. Nothing in this letter should be construed as a submission to jurisdiction. However, the constraints of the settlement agreement and a non US rightsholder's effective inabi

imposition is felt more strongly by absent class-members whose work is not comm available in the US.

The legal requirement is for individual notice to be sent to all class members whos addresses may be ascertained through reasonable effort. It is clear from media re millions of writers, including hundreds of New Zealand writers, have not received i notice of the Proposed Settlement and that the notice programme in New Zealand on the publication of the Summary Notice which is insufficient.

There is also evidence to show that the Summary Notice caused some confusion i Zealand with many class members under the impression that it only applied to boo in the US – clearly not the case. Insufficient effort was made to ensure that class m outside the US had a clear understanding of the implications of the Proposed Sett

**Inadequate Compensation**
I feel that the compensation to class members is inadequate and unfair. By way of I understand that if Google had been found to have infringed copyright, the minimu damage award would have been US$750 per infringement. I note that the efficacy penalties in discouraging copyright infringement has recently been reiterated by Co respect to music. A mere US$60 seems too low.

**Overriding contractual relationships between author and publisher**
The Proposed Settlement effectively overrides the contractual relationships betwee and publishers, and insufficient clarification is provided should one wish to opt in a opt out. I feel that this is a flaw in the Proposed Settlement that would need consid should it be approved.

Further, the author publisher procedure does not appear to adequately cater for sit where rights for one jurisdiction are held by the publisher and for another by the au again appears to arise from a lack of understanding of and interest in the impact of settlement on overseas authors. For example, what happens where a New Zealan granted New Zealand rights to the publisher but has retained or had reverted to the NZ rights? The situation is entirely unclear and again this suggests that NZ author be removed from the class or the settlement disapproved and returned to the partie amendment.

I also note with concern the lack of provision for representation of non US authors publishers on the proposed Book Rights Registry.

**Unfair treatment of non US public**
The alleged benefits of the Proposed Settlement to the general public apply only in NZ public will gain nothing from the Proposed Settlement.

**Antitrust issues surrounding the significant market power Google would acq the settlement.**
I believe that the sheer scope of Google's market power removes the potential for c The opportunity for authors to sell electronic rights to anyone else is remote and ra antitrust issues.

In addition, I believe that the requirement for class-members to decide whether they part of the Settlement or not before the Court hearing does not give authors opportu a fully informed decision.

I urge the Court to reject the Proposed Settlement on the grounds as detailed above **Please provide written receipt of this objection**

Yours truly

Alison Gray